No. [illegible]

In the Supreme Court of the United States.

October Term, [illegible].

William D. Williams and Abel Williams,
Plaintiffs in Error,

v.

The United States of America.

In Error to the District Court of the United States for the District of [illegible].

MOTION TO DISMISS OR AFFIRM.

[illegible]

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

WILLIS D. WILLIAMS AND AZEL WILLIAMS,
Plaintiffs in Error,
v.
THE UNITED STATES OF AMERICA.

No. 159.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

MOTION TO DISMISS OR AFFIRM.

Comes now the Solicitor General and moves the court to dismiss the writ of error in this case or affirm the judgment, upon the ground that no such substantial constitutional question is involved as justifies a writ of error from this court to the District Court.

The writ of error seeks to review a conviction and judgment under an indictment based on section 5 of the act of March 3, 1917 (39 Stat., c. 162, p. 1069), known as the Reed Amendment, and prohibiting the transportation for beverage purposes of intoxicating liquors in interstate commerce into any State or Territory the laws of which State or Territory prohibit the manufacture or sale

therein of intoxicating liquors for beverage purposes. The sole ground upon which this court could be asked to review the judgment of the District Court on writ of error is the contention that the act in question is unconstitutional. This contention is based alone on clause 6, section 9, of Article I of the Constitution, which provides:

> No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another.

The writ of error in this case was sued out after the decision in *United States* v. *Hill,* 248 U. S. 420. In that case the constitutionality of the act was not directly assailed, but, in stating the reasons for its conclusion, the court stated at length the reasons which fully sustain its constitutionality as a legitimate regulation of interstate commerce. In addition, the dissenting opinion of Mr. Justice McReynolds shows clearly that the power of Congress to pass such a regulation was considered by the court. The statute has several times since been before this court, but its constitutionality has not been questioned. That this is true is doubtless due to the fact that the case of *Clark Distilling Co.* v. *Western Maryland Railroad Co.,* 242 U. S. 311, sustaining the Webb-Kenyon Law, announced principles and rules which necessarily upheld the power of Congress to enact the Reed amendment. In the *Clark Distilling Company* case, although the effect of the Webb-Kenyon Law was to give a pref-

erence to the ports of States which had not enacted prohibition laws over those which had enacted such laws, if it can be said that the Reed amendment in any sense has that effect, the court and apparently the able counsel who appeared did not refer directly to the section of the Constitution now invoked. The reason is plain. It had been too long and too well settled by this court that—

> The fact that regulation, within the acknowledged power of Congress to enact, may affect the ports of one State more than those of another can not be construed as a violation of this constitutional provision. (*Armour Packing Co.* v. *United States,* 209 U. S. 56, 80.)
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> *South Carolina* v. *Georgia,* 93 U. S. 4, 13.
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> *Pennsylvania* v. *Wheeling & Belmont Bridge Co.,* 18 How. 421, 433.

What was said in the *Hill* case leaves no doubt that the regulation of interstate commerce by forbidding the shipment of liquors into prohibition States is within the acknowledged power of Congress to enact. The *Armour Packing Company* case and other cases cited are conclusive that the mere fact that such a regulation may affect the ports of one State more than those of another can not be construed as a violation of the constitutional provision invoked.

It is respectfully submitted that the constitutional question attempted to be raised has been too clearly and definitely settled by this court to

now furnish any substantial basis for a writ of error to the district court and that the writ should be dismissed or the judgment affirmed.

WILLIAM L. FRIERSON,
Solicitor General.

October, 1920.

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